

Remarks/Arguments

Claims 1-35 are currently pending the above-referenced patent application. Claims 3 and 22 are amended by way of the present Amendment.

Rejections Under 35 § U.S.C. 112¶2

Claims 3 and 22 were rejected under 35 U.S.C. § 112, second paragraph. For at least the reasons set forth below, it is respectfully submitted that this rejection is moot in view of the present amendments to claims 3 and 22.

Claim 3 has been amended to recite "...the predetermined amount is 0.5 of the adjustment." Thus, the amendment particular points out and distinctly claims the factor represented by the value set forth in the claims. In view of this amendment, this rejection is moot and the Applicants respectfully request withdrawal of this rejection.

Similarly, claim 22 has been amended to recite "...the predetermined amount is 0.5 of the adjustment." As with claim 3, the amendments to claim 22 renders this rejection moot and the Applicants respectfully request withdrawal of this rejection.

Rejections Under 35 U.S.C. § 102(b)

1. Claims 1-2, 4-6, and 10-13 were rejected under 35 U.S.C. § 102(b) as being anticipated by Dugan et al. For at least the reasons set forth below, Applicants respectfully submit that the present rejection is improper and should be withdrawn.

To properly establish a *prima facie* case of anticipation, *all* of the claimed elements must be found in the prior art. It follows, therefore, that if a *single* claimed element is not found in the prior art, a *prima facie* case of anticipation cannot properly be established.

Claim 1 is drawn to an optimizer which features "...a processor which determines an adjustment for equalizing a predetermined characteristic for each channel and **reduces the adjustment by a predetermined amount...**"

Dugan et al. relates to an optical channel regulator. The Office Action states that discloses "...a processor (48) which determines an adjustment for equalizing a predetermined characteristic for each channel and reduces the adjustment by a

predetermined amount...” (Emphasis added.) However, Dugan, et al. disclose that “[b]ased upon [a] comparison, feedback may be provided to electrically vary optical attenuator 64 to regulate the power level of the optical signal.” However, there is no disclosure in Dugan et al. of **determining an adjustment and reducing the adjustment by a predetermined amount**, as featured in independent claims 1. (Kindly refer to column 4, lines 38-41 of Dugan et al. for support for the above assertions.

Accordingly, for at least the reason set forth above, the reference Dugan et al. fails to disclose at least one of the features of claim 1. At least for this reason, a *prima facie* case of anticipation has not been established. Therefore claim 1 and the claims that depend directly or indirectly therefrom are patentable over the applied art.

2. Claims 14-19 under 35 U.S.C. § 102(b) as being anticipated by Dugan et al. For at least the reasons set forth below, Applicants respectfully submit that the present rejection is improper and should be withdrawn.

Claim 14 is drawn to an optimizer and features “...a processor determining an adjustment in accordance with fiber non-linearities...”

Dugan et al. has been discussed above. The Office Action asserts that Dugan et al. discloses “...determining an adjustment in accordance with fiber non-linearities...” However, there is no disclosure in Dugan et al. of “...determining an adjustment in accordance with fiber non-linearities...”, as recited in claims 14-19. Moreover, there is no reference in Dugan et al. to non-linear properties of fibers.

Accordingly, Dugan et al. lacks at least one of the features of claim 14. At least for this reason, a *prima facie* case of anticipation has not been established. Thus claim 14 and the claims that depend directly or indirectly therefrom are patentable over the applied art.

3. Claims 20-21 and 23-28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Dugan et al. as being anticipated by Dugan et al. For at least the reasons set forth below, Applicants respectfully submit that the present rejection is improper and should be withdrawn.

Independent claim 20 is drawn to a method of optimizing performance of a transmission system, and features "...determining an adjustment for equalizing a predetermined characteristic for each channel...[and] **reducing the adjustment by a predetermined amount...**"

Dugan et al. has been discussed above. For similar reasons to those discussed above, it is respectfully submitted that Dugan et al. does not disclose "...reducing the adjustment by a predetermined amount...", as recited in claims 20. Dugan et al. does not disclose at least one of the features of independent claim 20.

At least for this reason, a *prima facie* case of anticipation has not been properly established. Therefore, it is respectfully submitted that claim 20, and the claims that depend directly or indirectly therefrom are patentable over the applied art.

4. Claims 29-35 were rejected under 35 U.S.C. § 102(b) as being anticipated by Dugan et al. For at least the reasons set forth below, Applicants respectfully submit that the present rejection is improper and should be withdrawn.

Claim 29 is drawn to a method of optimizing performance of a transmission system, and features and features "...determining an adjustment in accordance with fiber non-linearities..."

Dugan et al. has been discussed above. For similar reasons to those discussed above, it is respectfully submitted that Dugan et al. lacks at least the referenced feature of claim 29. Accordingly, Dugan et al. lacks at least one of the features of independent claim 20.

For at least for this reason, a *prima facie* case of anticipation has not been properly established. Therefore, it is respectfully submitted that claim 29 and the claims that depend directly or indirectly therefrom are patentable over the applied art.

In reply to the rejection of claims 7-9 under 35 U.S.C. § 103(a) as being unpatentable over Dugan et al. in view of Khoe et al., the Applicant respectfully requests reconsideration. Claims 7-9 comprise the same recitations as discussed above for claim 1-2, 4-6, and 10-13. For similar reasons as discussed above, Dugan et al. is deficient in teaching or suggesting "...a processor which...reduces [an] adjustment by a predetermined amount..."

Khoe et al. relates to an optical transmission device. There is no disclosure in Khoe et al. of "...a processor which...reduces [an] adjustment by a predetermined amount...", as recited in claims 7-9. Accordingly, Khoe et al. does not alleviate the deficiencies of Dugan et al. of not teaching or suggesting all the recitations of claims 7-9. At least for this reason, a *prima facie* case of obviousness has not been established in the rejection of claims 7-9 under 35 U.S.C. § 103(a).

Rejections Under 35 U.S.C. § 103(a)

1. Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Dugan et al. For at least the reasons set forth below, it is respectfully submitted that this rejection is improper and should be withdrawn.

In addition to other requirements, it is well-established that to establish a proper *prima facie* case of obviousness, all of the elements must be found in the applied art. It follows, therefore, that if a *single* claimed element is not found in the applied art, a *prima facie* case of obviousness cannot properly be established.

Claim 3 depends from independent claim 1, which for reasons set forth above is patentable over the applied art. Accordingly, and while in no way conceding to the propriety or reasoning of the present rejection, it is respectfully submitted that claim 3 is patentable over the applied art.

2. Claim 22 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Dugan et al.

Claim 22 depends from independent claim 20, which for at least the reasons set forth above, is patentable over the applied art. Accordingly, and while in no way conceding to the propriety or reasoning of the present rejection, it is respectfully submitted that claim 22 is patentable over the applied art.

3. Claims 7-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dugan et al. in view of Khoe et al. For at least the reasons set forth below, it is respectfully submitted that this rejection is improper and should be withdrawn. the

Claims 7-9 comprise depend directly or indirectly from claim 1. For similar reasons as discussed above, Dugan et al. is deficient in teaching or suggesting "...a processor which...reduces [an] adjustment by a predetermined amount..."

Khoe et al. relates to an optical transmission device. There is no disclosure in Khoe et al. of "...a processor which...reduces [an] adjustment by a predetermined amount...", as recited in claims 7-9. Accordingly, Khoe et al. does not alleviate the deficiencies of Dugan et al. of not teaching or suggesting all the recitations of claims 7-9.

At least for the reasons set forth above, a *prima facie* case of obviousness has not been established in the rejection of claims 7-9 under 35 U.S.C. § 103(a). As such, it is respectfully submitted that claim 22 is patentable over the applied art.

CONCLUSION

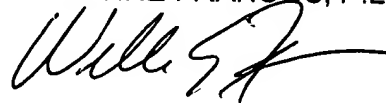
In view of the foregoing, reconsideration and withdrawal of all objections and rejections are respectfully requested. Allowance of all pending claims is earnestly solicited.

In the event that there are any outstanding matters remaining in the present application, please contact William S. Francos (Reg. No. 38,456) at (610) 375-3513 to discuss these matters.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment for any additional fees that may be required, or credit any overpayment, to Deposit Account No. 50-0238.

Respectfully submitted,

VOLENTINE FRANCOS, P.L.L.C.



William S. Francos, Esq.
Registration No. 38,456

VOLENTINE FRANCOS, P.L.L.C.
Treeview Corporate Center
Two Meridian Blvd
Wyomissing, PA 19610
Tel. (610) 375-3277
Fax (610) 375-8380
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On: 5 March 2004

By: Michelle Welgoss
Michelle Welgoss